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STATUTORY INSTRUMENTS

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**1996 No. 2827**

**The Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996**

**PART II**

**FORMATION, SUPERVISION AND CONTROL**

*Intervention*

**Revocation of authorisation**

- 16.**—(1) SIB may revoke an authorisation order if it appears to it—
- (a) that any of the requirements for the making of the order are no longer satisfied;
  - (b) that it is undesirable in the interests of shareholders, or potential shareholders, of the investment company with variable capital concerned that it should continue to be authorised; or
  - (c) without prejudice to sub-paragraph (b) above, that the company, any of its directors or its depositary—
    - (i) has contravened any relevant provision;
    - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
    - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (5)(a), (c) or (e) below.
- (2) For the purposes of paragraph (1)(b) above, SIB may take into account—
- (a) any matter relating to the company or its depositary;
  - (b) any matter relating to any director or controller of the depositary of the company;
  - (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
  - (d) any matter relating to—
    - (i) any director of the company; or
    - (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 above if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.
- (3) Before revoking any authorisation order that has come into effect, SIB shall ensure that such steps as are necessary and appropriate to secure the winding up of the company (whether by the court or otherwise) have been taken.
- (4) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.

- (5) In paragraph (1)(c) above, “relevant provision” means any provision of—
- (a) the 1986 Act;
  - (b) any rules or regulations made under that Act;
  - (c) these Regulations;
  - (d) SIB regulations; and
  - (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary of such a company, is a member.

### **Representations against revocation**

17.—(1) Where, in respect of an investment company with variable capital, SIB proposes to revoke an authorisation order on any of the grounds set out in regulation 16(1) above, SIB shall give the company, its depositary and any other person who appears to SIB to be interested written notice of its intention to do so.

(2) A notice under paragraph (1) above shall state the reasons for which SIB proposes to revoke the order and give particulars of the rights conferred by paragraph (3) below.

(3) A person on whom notice is served under paragraph (1) above may, within 21 days of the date of service, make written representations to SIB and, if desired, oral representations to a person appointed for that purpose by SIB.

(4) SIB shall have regard to any representations made in accordance with paragraph (3) above in determining whether to revoke the authorisation order.

### **Directions**

18.—(1) SIB may give a direction under this regulation in relation to an investment company with variable capital if it appears to it—

- (a) that any of the requirements for the making of an authorisation order in respect of the company are no longer satisfied;
- (b) that the exercise of the power conferred by this paragraph is desirable in the interests of shareholders, or potential shareholders, of the company; or
- (c) without prejudice to sub-paragraph (b) above, that the company, any of its directors or its depositary—
  - (i) has contravened any relevant provision;
  - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
  - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (9)(a), (c) or (e) below.

(2) A direction under this regulation may—

- (a) require the company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (b) in the case of a director of the company who is the person designated in the company’s instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations, require that director to cease transfers to or from, or both to and from, his own holding of shares, or of any class of shares, in the company on a date specified in the direction until such further date as is specified in that or another direction;

- (c) in the case of an umbrella company, require that investments made in respect of one or more parts of the scheme property which are pooled separately be realised and, following the discharge of such liabilities of the company as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to shareholders in accordance with SIB regulations;
- (d) require any director of the company, by such date as is specified in the direction or if no date is specified as soon as practicable, to present a petition to the court to wind up the company;
- (e) require that the affairs of the company be wound up otherwise than by the court.

(3) Subject to paragraph (4) below, the revocation of an authorisation order in respect of a company shall not affect the operation of any direction under this regulation which is then in force; and a direction under this regulation may be given in relation to a company in the case of which an authorisation order has been revoked if a direction under this regulation was already in force at the time of revocation.

(4) Where a winding up order has been made by the court, no direction under this regulation shall have effect in relation to the company concerned.

(5) For the purposes of paragraph (1)(b) above, SIB may take into account—

- (a) any matter relating to the company or its depositary;
- (b) any matter relating to any director or controller of the depositary of the company;
- (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
- (d) any matter relating to—
  - (i) any director of the company; or
  - (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 above if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.

(6) Sections 60 (public statement as to person's misconduct), 61 (injunctions and restitution orders) and 62 (actions for damages) of the 1986 Act shall have effect in relation to a contravention of a direction under this regulation as they have effect in relation to any such contravention as is mentioned in those sections.

(7) SIB may, either of its own motion or on the application of the company or its depositary, withdraw or vary a direction given under this regulation if it appears to SIB that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

(8) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.

(9) In paragraph (1)(c) above, "relevant provision" means any provision of—

- (a) the 1986 Act;
- (b) any rules or regulations made under that Act;
- (c) these Regulations;
- (d) SIB regulations; and
- (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary or such a company, is a member.

### **Notice of directions**

**19.**—(1) The power to give a direction under regulation 18 above in relation to an investment company with variable capital shall be exercisable by written notice served by SIB on the company and its depositary, and any such notice shall take effect on such date as is specified in the notice.

(2) If SIB refuses to withdraw or vary a direction on the application of the company concerned or of the depositary of that company, it shall serve the applicant with a written notice of the refusal.

(3) A notice—

- (a) giving a direction or varying it otherwise than on the application of the company concerned or of the depositary of that company; or
- (b) refusing to withdraw or vary a direction on the application of such a person;

shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.

(4) SIB may give public notice of a direction given by it under regulation 18 above and of any withdrawal or variation of such a direction; and any such notice may, if SIB thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

### **Applications to the court**

**20.**—(1) In any case in which SIB has power to give a direction under regulation 18 above in relation to an investment company with variable capital, it may apply to the court for an order—

- (a) removing any director of the company; or
- (b) removing the depositary of the company;

and replacing any of them with a person or persons nominated by SIB and appearing to it to satisfy the criteria set out in paragraphs (4) to (7) or, as the case may be, paragraph (8) of regulation 10 above.

(2) On an application under this regulation the court may make such order as it thinks fit.

(3) SIB shall—

- (a) give written notice of the making of an application under this section to—
  - (i) the company concerned;
  - (ii) its depositary; and
  - (iii) where the application seeks the removal of any director of the company, that director; and
- (b) take such steps as it considers appropriate for bringing the making of the application to the attention of the shareholders of the company.